

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE : Def. ID# 92S02580DI

v. :

CLIFTON D. HALL :

MEMORANDUM OPINION

DATE SUBMITTED: April 27, 2006

DATE DECIDED: July 26, 2006

Clifton D. Hall, pro se, H.R.Y.C.I., P.O. Box 9561, Wilmington, DE 19801

James Adkins, Esquire, Department of Justice, 114 E. Market Street, Georgetown, DE 19947

E. Stephen Callaway, Esquire, Office of the Public Defender, 14 The Circle, Georgetown, DE
19947

Stokes, J.

Defendant Clifton D. Hall (“defendant”) has filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). Defendant argues he is entitled to relief because the Superior Court never had jurisdiction over this case. This is my decision denying the motion because defendant no longer is in custody or subject to future custody in this criminal matter. Superior Court Criminal Rule 61(a).¹

On June 12, 1992, defendant was arrested for the following crimes: burglary in the third degree; theft of a firearm (ten counts); theft misdemeanor (four counts); criminal mischief (misdemeanor); conspiracy in the second degree; conspiracy in the third degree (three counts); and criminal trespass in the third degree. He thereafter was indicted on these same charges. The crimes allegedly occurred at various times, specifically, between December 7 and 18, 1991; between December 17-19, 1991; and on January 9, 1992.

On July 31, 1992, defendant pled guilty to, and was sentenced on, charges of burglary in the third degree and two counts of theft of a firearm, which crimes occurred on January 9, 1992. As to the burglary in the third degree conviction, the Court sentenced defendant to three years at Level 5, suspended for probation. As to each theft of a firearm conviction, the Court sentenced him to one year at Level 5, suspended for probation. Because defendant repeatedly violated his probation, he was resentenced thereon numerous times and did not finish serving this sentence until 2001.

Over the past fifteen years, defendant was arrested on numerous criminal charges. He alleges

¹In Superior Court Criminal Rule 61(a)(1), it is provided in pertinent part:

This rule governs the procedure on an application by a person in custody or subject to future custody under a sentence of this court seeking to set aside a judgment of conviction ... on the ground that the court lacked jurisdiction or on any other ground that is a sufficient factual and legal basis for a collateral attack upon a criminal conviction

that recently he was sentenced in Kent County Superior Court as an habitual offender. He further alleges that the convictions in this case contributed to his being declared an habitual offender.

Defendant asserts that at the time he allegedly committed the crimes in this pending case, was arrested for them, and pled guilty to them, he was under the age of eighteen. In support of his contentions, he has submitted a birth certificate showing that his date of birth is December 28, 1974.

A review of defendant's criminal history shows a number of aliases and several different birth dates, one of which is December 28, 1973, and another of which is December 28, 1974. On the Affidavit of Probable Cause in this case, the arresting officer marked through the system-generated birth date of December 28, 1974 and put "73" in place of "74". Interestingly, defendant wrote three letters to this Court during the pendency of these proceedings in which he stated he was eighteen at the time he committed the crimes and pled guilty. Docket Entries 89, 90 and 97.

I will assume, without making a finding thereon, that defendant's date of birth is December 28, 1974, and that he was minor at the time he committed the crimes at issue, was arrested for them and pled guilty to them. The crimes were not ones which were within this Court's exclusive jurisdiction. Cf. 10 Del. C. § 938 (1992).² I also will assume, without making a finding thereon, that no non-amenable proceedings took place in Family Court pursuant to 10 Del. C. § 938 (1992). Thus, I assume that this Court did not have jurisdiction over defendant.

As the discussion below will show, defendant is not entitled to any relief for this alleged defect. During the nine year period when he was incarcerated on the sentence in this matter or subject to future custody, he could have sought relief by filing a Rule 61 motion. However, once his

²In 1992, 10 Del. C. § 938(a)(1) (now designated 10 Del. C. § 1010) provided that a child shall be proceeded against as an adult where the child is charged with first degree murder, rape, unlawful sexual intercourse in the first degree or kidnapping.

sentence was complete, he lost all opportunity to attack the conviction in this case.

The courts have made clear that the only way to collaterally attack a judgment of conviction is by Rule 61. There is no remedy by way of Superior Court Criminal Rule 35 (a).³ Brittingham v. State, 705 A.2d 577 (Del. 1998) (“The ‘narrow function of Rule 35 is to permit correction of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence.’”). Defendant also may not seek relief by way of a writ of error *corum nobis*, as that procedure has been abolished. Heron v. State, 768 A.2d 469 (Del. 2001); In the Matter of Nicholson, Del. Supr., No. 4, 1994, Walsh, J. (Jan. 31, 1994); State v. Hinson, Del. Super., Def. ID# 9804020279, Cooch, R.J. (Feb. 10, 2006).

Attacking the jurisdiction of this Court over the matter must be brought pursuant to Rule 61. Rule 61(a), (i)(5);⁴ State v. Mills, Del. Super., Def. ID# 86011635DI, Gebelein, J. (March 27, 1996), app. dismiss., Del. Supr., No. 182, 1996, Berger, J. (Aug. 26, 1996). However, since defendant no longer is in custody nor is he subject to future custody, that means of relief is not available. Epperson v. State, 829 A.2d 935 (Del. 2003); Summers v. State, 818 A.2d 971 (Del. 2003); Fullman v. State, 746 A.2d 276 (Del. 2000); Guinn v. State, Del. Supr., No. 549, 1992, Walsh, J. (April 21, 1993);

³In Superior Court Criminal Rule 35(a), it is provided:

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

⁴See footnote 1, supra, for text of Rule 61(a)(1). In Rule 61(i)(5), it is provided:

Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

Petsinger v. State, Del. Super., Def. ID# 9605020352, Graves, J. (June 28, 2002); State v. Beles, Del. Super., Cr.A. No. 96-06-0468, Graves, J. (March 13, 1997).

The question the Court has considered is whether defendant may invoke the collateral consequences rule the Supreme Court adopted in Gural v. State, 251 A.2d 344, 344-45 (Del. 1969). That rule is:

[T]he satisfaction of the sentence renders the case moot unless, in consequence of the conviction or sentence, the defendant suffers collateral legal disabilities or burdens; in which event the defendant is considered to have a sufficient stake in the conviction or sentence to survive the satisfaction of the sentence and to permit him to obtain a review or institute a challenge.

Gural v. State, 251 A.2d at 344-45. The Supreme Court clarified in State v. Lewis, 797 A.2d 1198, 1201 (Del. 2002), that this collateral consequences rule applies only to Rule 35(b); it is not applicable in a situation where Rule 61 would have applied.

Although defendant might argue that he is deprived of a remedy for his situation, that argument carries no weight when he had nine years to make the argument he currently is making. At some point, matters must become final and a defendant no longer has rights to obtain a review or institute a challenge of a judgment of conviction. The courts have determined that in the situation where a person is attacking a judgment of conviction on the ground of lack of jurisdiction, those rights become moot when a sentence has been served completely. It is too late to resurrect this argument which could have been, but was not, asserted in a timely manner. Under the circumstances, defendant does not have standing to invoke Rule 61, and his motion must be dismissed.

IT IS SO ORDERED.